

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 16-19

June 17, 2016

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Anne Purcell, Associate General Counsel

SUBJECT: Attaching Requested Orders to Motions for Default Judgment Filed  
Pursuant to Noncompliance with Informal Settlement Agreements

[Memorandum GC 11-04](#) instructed Regions to routinely include default judgment language in all informal settlement agreements and all compliance settlement agreements. [Memorandum OM 14-48](#) furnished additional guidance on the subject, introduced some modifications to the language, and relayed instructions for proceeding for default judgment in the event of noncompliance. Memorandum OM 14-48 vested Regions with the election, when proceeding for default judgment, to request either a “full remedy” for the reissued complaint allegations, or to request that the Board enforce the settlement provisions that have not been complied with. A full remedy for complaint allegations on which the Board passes includes an appropriate cease and desist order which may be court enforced, reinstatement of discharged or laid off employees, 100 percent backpay, including interest and expenses such as excess tax liability and proper allocation of quarterly earnings for social security purposes.<sup>1</sup>

In a number of default judgment cases the Board has decided since the issuance of GC 11-04 and even OM 14-48, the Board has ordered less than a full remedy for the violations it found to have been committed, commenting that although the settlement agreement contemplated the General Counsel having entitlement to a full remedy for the violations alleged, the General Counsel did not seek such in the motion for default judgment.<sup>2</sup> In a number of these cases there was no cease and desist order. While there will be circumstances where obtaining compliance with the breached settlement

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<sup>1</sup> Examples of instances where Regions secured full remedies pursuant to motions for default judgment include *National Union, United Security & Police Officers of America (MVM, Inc.)*, 362 NLRB No. 37 (2015) (full remedy of cease and desist order and substantial affirmative remedies for *Beck* violations, exceeding affirmative remedies included in settlement agreement), *Key Handling Systems, Inc.*, 361 NLRB No. 2 (2014) (Board orders full remedy as requested in motion for default judgment, including cease and desist order and backpay possibly in excess of amounts agreed upon in settlement, amounts to be determined in compliance proceeding), and *New Jersey State Opera*, 360 NLRB No. 5 (2013) (same).

Orders are specific to violations the Board has found. Reviewing Board orders in cases where the Board has found similar violations to those included in the complaint will yield helpful sample orders.

<sup>2</sup> E.g. *Morris Glass & Construction, Inc.*, 363 NLRB No. 150, slip op. at p. 3 (2016); *Midwestern Video Personnel, Inc.*, 363 NLRB No. 120, slip op. at pp. 2-3 (2016); *Serenity Dental Spa*, 362 NLRB No. 116, slip op. p. 3 (2015); *Dreamclinic, LLC*, 361 NLRB No. 112, slip op. at pp. 3-4 (2014); *D2 Abatement, Inc.*, 361 NLRB No. 51 slip op. at p. 3 (2014); *Performance Cleaning Group*, 360 NLRB No. 99 slip op. at p. 3 (2014).

rather than a full remedy better effectuates the purposes of the Act,<sup>3</sup> in most situations that is not the case. Thus, informal settlements typically involve less than the full relief a Board Order would provide (e.g. no cease and order issues, no finding of a violation for purposes of recidivism, and, sometimes, compromises in other remedial areas). Where a charged party fails to comply with its undertakings in the settlement, an important part of the compromise – expeditious resolution – is lost. Accordingly, Regions should seek full remedies where the charged party’s non-compliance necessitates invoking the default provisions of a settlement agreement,<sup>4</sup> unless seeking compliance with the settlement terms better effectuates the Act. This would include, for example, an order of reinstatement, as well as additional backpay where applicable, where a term of the settlement involved the employee waiving reinstatement.<sup>5</sup>

In some cases Regions have specified requests for a full remedy in complaints issued based on noncompliance with informal settlements, but the Board has declined to grant this relief, although the complaints were exhibits to the Regions’ motions, because the motions themselves did not request this relief.<sup>6</sup> In order to avoid this situation, where a Region is seeking a full remedy the Region should 1) specify what that remedy is in the Motion for Default Judgment, 2) cite precedent as to why the requested remedy is appropriate, and 3) supply the Board with a proposed remedial order and proposed Notice to Employees as attachments to the motion.<sup>7</sup> Where Regions choose to seek only compliance with unfulfilled aspects of the settlement, and not full relief, the case file should document the reasons for the decision.

If you have any questions, please contact your Deputy or AGC.

/s/  
A. P.

cc: NLRBU

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<sup>3</sup> One example is where an employee waives reinstatement in exchange for front-pay, which the employee uses to relocate for another job. Compliance with the settlement would better effectuate the purposes of the Act because reinstatement had been rendered impractical due to actions the employee took based on the terms of the settlement.

<sup>4</sup> Under the terms of the standard language, Regions first give charged parties an opportunity to cure their noncompliance, before resorting to the default judgment procedure.

<sup>5</sup> In *Phoenix Finishing, Inc.*, 354 NLRB (2009) employees had waived reinstatement as part of settlement agreement. Following the employer’s default, two-member Board ordered reinstatement, as well as full backpay rather than only the backpay amount contained in the settlement. This case is an excellent example of the “full remedy” principle, although as a two-member Board case, it is not valid precedent due to *New Process Steel v. NLRB*, 560 U.S. 674 (2010).

<sup>6</sup> *Midwestern Video Personnel, Inc.*, 363 NLRB No. 120 (2016)(reissued complaint pled for cease and desist order, notice, and reinstatement, but the motion itself only specified the unpaid settlement amount; the Board ordered only payment of the unpaid settlement amount); *Serenity Dental Spa*, 362 NLRB No. 116 (2015) (reissued complaint requested a cease and desist order, but the motion itself did not; result – no cease and desist order).

<sup>7</sup> Where Regions seek special remedies, these must be pled in the complaint, along with sufficient facts to warrant the requested special remedies. Where Regions seek the Board’s standard remedy for violations of the type alleged, the complaint ordinarily need not plead these expressly in the complaint.